



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OCT 18 2011

201202042

Uniform Issue List: 401.06-00, 401.06-02

SE: T: EP: RA: T3

Legend:

Taxpayer A:

Date 1:

Date 2:

Taxpayer B:

Date 3:

Date 4:

Date 5:

Trust H:

Executor G:

IRA X:

Custodian C:

Daughter J:

Grandson T:

Date 6:

Date 7:

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IRA Y:

IRA Z:

Date 8:

State C:

Date 9:

Month 1:

Dear :

This is in response to your letter dated June 25, 2010, as supplemented by correspondence dated December 10, 2010, February 28, 2011, March 30, 2011, and September 13, 2011, submitted on your behalf by your authorized representative, in which you request rulings under section 401(a)(9) of the Internal Revenue Code ("the Code").

Taxpayer A was born on Date 1 and died on Date 2. Taxpayer B, the wife of Taxpayer A, was born on Date 3, and died on Date 4, eleven days after the death of Taxpayer A.

Executor G is the executor of both the Estate of Taxpayer A and the Estate of Taxpayer B.

On Date 5, Taxpayer A and Taxpayer B established Trust H, as settlors. Executor G is the executor of Trust H.

It is represented that Trust H is a valid see-through trust under section 1.401(a)(9)-4, Q & A-5, of the Income Tax Regulations ("Regulations") and that

beneficiaries of Trust H with respect to the Trust's interest in an employee's benefit may be treated as designated beneficiaries because the following requirements are met: (1) Trust H is valid under the laws of State C, (2) Trust H became irrevocable upon the death of the employee, (3) The beneficiaries of the trust who are beneficiaries with respect to Trust H's interest in the employee's benefit are identifiable within the meaning of section 1.401(a)(9)-4, Q & A-5(a), of the Regulations from the trust instrument, and (4) The documentation described in section 1.401(a)(9)-4, Q & A-6, of the Regulations has been timely provided to the custodian.

Taxpayer A was a participant in an individual retirement account IRA X, the custodian of which was Custodian C. Executor G represents that IRA X was at the date of death of Taxpayer A, and continues to be, qualified within the meaning of section 408(a) of the Code.

Taxpayer A reached age 70½ before his death and he had begun receiving required minimum distributions from IRA X to comply with section 401(a)(9) of the Code.

Taxpayer A named Trust H to be the beneficiary of IRA X upon his death. No distribution of IRA X benefits occurred between Date 2, the date of Taxpayer A's death and Date 4, the date of Taxpayer B's death.

In accordance with section C of Trust H, Executor G became a trustee of Trust H upon the death of Taxpayer A, and Executor G became the sole trustee of Trust H upon the death of Taxpayer B.

Relevant provisions of Trust H provide the following -

- Trust H was established as a revocable trust. Upon the death of Taxpayer A, Trust H became irrevocable as to Taxpayer A's interest in Trust H. Upon Taxpayer B's death, the entire Trust H became irrevocable.
- Upon the death of the first settlor to die the surviving settlor became the sole income beneficiary of Trust H.
- The interest of each respective beneficiary of Trust H is treated as a separate share.
- Upon the respective deaths of Taxpayer A and Taxpayer B, Daughter J and Grandson T became beneficiaries of Trust H as to assets for which a beneficiary designation named Trust H as the beneficiary, which assets included IRA X. Daughter J is the daughter of Taxpayer A and Taxpayer B. Daughter J's date of birth is Date 6. Grandson T is the son of Daughter

J and the grandson of Taxpayer A and Taxpayer B. Grandson T was born on Date 7.

- The proportion of Daughter J's and Grandson T's respective interests in Trust H applicable to IRA X is Daughter J at 23.08 percent (15.00% divided by 65%) and Grandson T at 76.92 percent (50% divided by 65%).
- On Date 8, Trust H was amended to establish Daughter J Subtrust and Grandson T Subtrust to hold the share of Trust H allocable to Daughter J and Grandson T respectively.
- Each year Executor G is required to withdraw from individual retirement accounts amounts equal to the minimum required distribution determined in accordance with the provisions of federal tax law, and to distribute that amount at least annually to the applicable trust beneficiary.
- Trust H is governed by the laws of State C.

It is represented that the individuals who are beneficiaries with respect to Trust H, and each one's respective interests in IRA X, are identifiable from the Trust H instrument, and the documentation specified in Q & A-6 of section 1.401(a)(9)-4 of the Regulations, has been timely provided to Custodian C.

It is represented that on Date 9, within nine months after Taxpayer B's, date of death, Executor G, as executor of Taxpayer B's estate, disclaimed any interest Taxpayer B had in Taxpayer A's share of Trust H, including any interest Taxpayer B had in IRA X.

It is represented that the disclaimer is a valid disclaimer under the laws of State C, the jurisdiction of the Estate of Taxpayer B. It is also represented that the disclaimer is a qualified disclaimer under section 2518 of the Code, as an irrevocable and unqualified refusal by a person to accept an interest in property because; (1) the disclaimer was in writing; (2) the disclaimer was received by the transferor of the interest, his legal representative, or the holder of legal title to the property, not later than the date which is 9 months after the later of the date on which the transfer creating the interest is made or the date on which the person refusing the interest attains age 21; (3) the person disclaiming the interest did not accept the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passed without any direction by the person making the disclaimer and passed to a person other than the person making the disclaimer.

During Month 1, Trustee H divided IRA X into two inherited individual retirement accounts, IRA Y for the Daughter J Subtrust's interest in IRA X and IRA Z for the Grandson T Subtrust's interest in IRA X.

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It is represented that debts and expenses of the Estates of Taxpayer A and Taxpayer B and of Trust H have been paid only from assets other than the assets of IRA X, and will continue to be so paid.

Based on the above facts and representations, the following letter rulings have been requested:

1. That for the purpose of this ruling request, Trust H, the Daughter J Subtrust and the Grandson T Subtrust constitute valid "see-through" trusts within the meaning of section 1.401(a)(9) of the Regulations.
2. That Daughter J is the sole individual whose life expectancy must be considered for purposes of determining who is the "designated beneficiary" of IRA X under section 401(a)(9) of the Code.

With respect to your ruling requests, Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies before his entire interest has been distributed, where distributions have begun in accordance with subparagraph (A)(ii), and the employee dies before his entire interest had been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of his death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

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Code section 408(a) provides the rules governing IRAs. Code section 408(d)(1) provides that except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

With further respect to your ruling request, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

Section 1.401(a)(9)-4 of the Regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also is designated as a beneficiary under the plan.

Section 1.401(a)(9)-4 of the Regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements

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are met:

- (1) the trust is valid under state law or would be but for the fact there is no corpus.
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.
- (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument.
- (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4 of the Regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Q&A-5(c), provides, in relevant part, that the separate account rules of A-2 of section 1.401(a)(9)-8 are not available to trust beneficiaries with respect to the trust's interest in the employee's (IRA holder's) benefit.

Section 1.401(a)(9)-4 of the Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(a), provides, in

general, that if an employee dies after distribution has begun as defined under A-6 of section 1.401(a)(9)-2, in order to satisfy the requirements of Code section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either

(1) If the employee has a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the longer of --

(i) The remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and

(ii) The remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5; or

(2) If the employee does not have a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5 of the Regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-5 of the Regulations, Q&A-7(a) provides, in relevant part, that, except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-8 of the Regulations, Q&A-2(a)(2) provides that, if an employee's IRA holder's benefit in a defined contribution plan is divided into "separate accounts" in accordance with the conditions contained therein, distributions from the separate account may be based on the life expectancy of the beneficiary of the "separate account" without regard to the life expectancies of the beneficiaries of other separate accounts.



With respect to your ruling requests, it is represented that (1) Trust H is valid under the laws of State C, (2) Trust H became irrevocable upon the death of Taxpayer A, (3) The beneficiaries of Trust H who are beneficiaries with respect to the Trust H's interest in IRA X are identifiable within the meaning of section 1.401(a)(9)-4, Q & A-5(a), of the Regulations from the trust instrument, and (4) The documentation described in section 1.401(a)(9)-4, Q & A-6, of the Regulations has been timely provided to the custodian of IRA X. Accordingly, we rule that Trust H including its component subtrusts constitutes a valid "see through trust" with respect to IRA X.

Since Trust H constitutes a valid "see through trust", it is necessary to determine who, if anyone, is the designated beneficiary within the meaning of Code sections 401(a)(9) and 408(a)(6), of Taxpayer A's IRA X. Since the separate account rules are not available to trust beneficiaries with respect to a trust's interest in an IRA, in accordance with Section 1.401(a)(9)-5, Q&A-7(a) of the Regulations, the trust beneficiary with the shortest life expectancy will be the designated beneficiary with respect to IRA X.

It is represented that IRA X was initially payable to Trust H prior to being divided among the beneficiaries of the two subtrusts created under the provisions of Trust H. As noted above, Daughter J and Grandson T are the only beneficiaries of Trust H's subtrusts who will receive the amounts distributed from Taxpayer A's IRA X, and they are the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6) of IRA X. As noted previously, Daughter J is older than Grandson T, and therefore has the shorter life expectancy. Accordingly, we conclude that Daughter J is the sole individual whose life expectancy must be considered for purposes of determining who, if anyone, is the Code section 401(a)(9) "designated beneficiary" of Taxpayer A's IRA X. Since IRA X was subsequently divided into IRA Y, an inherited IRA for the benefit of Daughter J and IRA Z, an inherited IRA for the benefit of Grandson T, the life expectancy determined above must be applied to distributions from both IRA Y and IRA Z.

This ruling letter is based on the assumption that IRA X, IRA Y and IRA Z meet the requirements of Code section 408(a) at all times relevant thereto. Furthermore, this ruling letter rests on the assumption that Trust H, and its related sub-trusts, are valid under the laws of State C as represented. It also assumes the correctness of all facts and representations contained therein.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

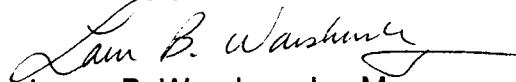
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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxxxxxxxxx-xxxxx at xxxxxxxxxxxxxxxx (phone) or at xxxxxxxxxxxxxxxx (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: xxxxxxxxxxxxxxxx  
xxxxxxxxxxxxxxxxxxxxx  
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